

INTERAGENCY ADVISORY GROUP

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Minutes of the IAG Adverse Action Committee
June 5, 1979

Wilma Lehman of OPM's Workforce Effectiveness and Development Group chaired the meeting, assisted by Loy Wood who has been working as a consultant to develop a new FPM Chapter 772, Appeals, Grievances, and Reviews, and Cynthia Field of WED.

Proposed outline for Chapter 772

Mr. Wood, who formerly worked in the adverse action/reduction in force/grievance areas in CSC's Bureau of Policies and Standards, noted that this chapter will describe the types of actions subject to review, but is intended in no sense to regulate or repeat the procedures for taking various types of actions. Rather, it is meant to be useful to personnel technicians by describing the channels of review in summary, and providing reference to other requirements of law and regulations. He would appreciate input from members. Mrs. Lehman also asked if members will find this arrangement of materials helpful, particularly if GPO could offer it as a separate publication so that it could be purchased by employees. She asked members to give any comments to herself or Cynthia Field at 632-5623.

Status of permanent regulations

Mrs. Lehman noted that OPM hoped to have final Part 432 and 752 out in time to be printed in the new edition of 5 CFR, to be issued in July. (Note: while OPM will not meet this deadline, we hope to publish the final regulations in July.) OPM will also get revised Part 771 out as soon as possible as a proposed regulation with a shortened, 30 day comment period before issuing a permanent regulation.

Present applicability of Part 432 procedures

In response to a member's question as to the applicability of Part 432 procedures before an agency's performance appraisal system(s) was in place, Mrs. Lehman said that a union had requested a further stay of an agency's Part 432 actions, but that the Special Counsel had not stayed the application of the part. OPM has filed a brief with the Special Counsel on this matter.

Questions and comments on proposed grievance regulations

Members had several questions and comments on the proposed Part 771:

- Is the determination as to whether an employee is a manager or supervisor grievable? Will Part 771 exclude this matter or, if not, will the language of Part 771 permit agencies to establish procedures applicable to this coverage under the administrative grievance system? The intention was not to exclude but to provide flexible procedures.
- Another member pointed out that if the administrative grievance procedures were sufficiently flexible, it would be better to include as many matters as possible under the procedures, since in most cases some form of review will be necessary, and it would be better to have these reviews under one procedure.
- Grievance coverage or exclusions should be shown only in Part 771, not in other parts of 5 CFR.

Summary of MSPB adverse action decisions

Mrs. Field noted that there had been roughly 60 initial substantive decisions on Part 752 cases: of these, 52 sustained the agency action while eight reversed the agency, three for procedural errors, and five on the merits of the cases. These decisions covered 56 removals, two changes to lower grade, one reduction in the number of duty hours of a part-time employee, and one 20-day suspension. Of the removals, 20 were for AWOL, all sustained. Four were for physical unfitness, again all sustained. One was sustained for off-duty misconduct in which the agency successfully showed a nexus. Another was sustained for conviction for possession of marijuana, where again a nexus was shown.

A member pointed out that attorney's fees had been awarded in two cases. Members also discussed the recent MSPB statement that hearings will be held only in ten MSPB field office locations, rather than at the various installations in cities of employment as they had been previously. One member noted that MSPB had in fact sent a presiding officer to an agency installation on request; others said their requests to do so had been turned down. Some agencies were routinely offering to pay travel and per diem for the MSPB presiding officer in each case or asking for postponement until a legal decision is made regarding such payment. Agencies fear there will be a chilling effect on employee appeals to MSPB.

Suggested change of name for Adverse Action Committee

Mrs. Lehman and Mrs. Field discussed with the members the idea of changing the name of the Committee, since the present name appears too narrow and not descriptive of the areas of concern to the Committee. The name Employee Relations Committee was informally agreed on as being more inclusive, and while possibly too broad, a better description of the Committee's concerns.